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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

THE SIERRA CLUB and ENVIRONMENTAL INTEGRITY PROJECT.

Plaintiffs.

VS.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

Defendant.

Case No. C-11-0846-MEJ

**PLAINTIFFS' UNOPPOSED MOTION TO
EXTEND THE SUMMARY JUDGMENT
REPLY BRIEF DEADLINE;
DECLARATION OF COUNSEL;
~~PROPOSED~~ ORDER**

Pursuant to this Court's Order granting Defendant's Second Unopposed Administrative Motion To Augment Briefing Schedule, Dkt. 31, Plaintiffs' summary judgment reply brief is due no later than April 27, 2012. Pursuant to Federal Rule of Civil Procedure 6(b), Plaintiffs now move for a modest enlargement of time until Tuesday, May 1, 2012, in which to file its summary judgment reply brief. This motion is supported by the Declaration of Counsel incorporated into this document. *Infra*.

A district court's decision regarding an extension of time lies well within its discretion. *United States ex rel. Hawaiian Rock Prods. Corp. v. A.E. Lopez Enters.* 74 F.3d 972, 976 (9th Cir. 1996) (establishing a presumption that a district court's denial of a motion for extension of time is within its discretion).

1 lishing that such a decision will not be disturbed absent an abuse of discretion).

2 For the following reasons, the Plaintiffs assert good cause exists to grant this request for an en-
 3 largement of time.

4 **1.** Unanticipated conflicts of schedule have recently arisen for Plaintiffs' counsel that

5 necessitate additional time to prepare Plaintiffs' reply brief. Namely, Plaintiffs' coun-
 6 sel, David Bahr, on April 25, 2012, Mr. Bahr was unexpectedly called upon by a pre-
 7 existing client to develop and implement a strategy to promptly intervene in a federal
 8 "Reverse FOIA" case in which a complaint and motion for preliminary injunction
 9 were filed on April 23, 2012. Because the motion to intervene has not yet been filed,
 10 attorney Bahr is not at liberty to provide additional information regarding this devel-
 11 opment. Attorney Bahr was also unexpectedly called upon to develop and submit two
 12 substantial administrative filings seeking review and reversal of agency decisions is-
 13 sued under the federal Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*,
 14 (1) *Little Hocking Water District v. U.S.E.P.A.*, # HQ-FOI-01571-10 (filed April 25,
 15 2012); (2) *Sierra Club v. Internal Revenue Service*, # F12074-0125 (filed April 16,
 16 2012). Additionally, Mr. Bahr has also been required to review and analyze volumi-
 17 nous document production in a FOIA case in support of a case status report that is due
 18 May 1, 2012 in *National Wildlife Federation v. United States Federal Emergency*
 19 *Management Agency*, Case No. 2:11-cv-00512-JLR (W.D.Wash.). Finally, Mr. Bahr
 20 has been engaged in preparing a petition for cost and attorney fees and coordinating
 21 supporting documentation that is due May 4, 2012 in *Audubon Society of Portland v.*
 22 *United States Natural Resources Conservation Service*, Case No. 3:10-cv-01205-H
 23 (D.Or.).

24 **2.** This request will not unreasonably delay final disposition of this case. The summary

1 judgment argument date was recently continued by a week until May 17, 2012. Dkt. #
 2 38.

3 **3.** No party will be disadvantaged by this enlargement of time. If this motion is granted,
 4 with the recent continuance of the argument date, the parties and the Court will actu-
 5 ally have more time between the filing of the reply brief and the hearing (16 days)
 6 than under the schedule previously approved by the Court (13 days).

7 **4.** This is Plaintiffs' first request for an enlargement of time in this case.

8 **5.** This request for enlargement is made in good faith and for no improper purpose.

9 **6.** On April 26, 2012, undersigned counsel conferred by email with Defendant's counsel
 10 regarding this motion. On April 27, 2012, Defendant notified the undersigned counsel
 11 that it does not oppose this request.

12 WHEREFORE, Defendant respectfully requests the Court to enlarge Plaintiffs' time to file their
 13 summary judgment reply brief until May 1, 2012.

14 Respectfully submitted for the Court's consideration, this 27th day of April, 2012.

15 s/ David Bahr
 16 David Bahr (Oregon Bar No. 901990)
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23 DECLARATION OF COUNSEL

24 **1.** My name is David Bahr. I am plaintiffs' lead counsel in this case. This declaration is based on
 25 my personal knowledge and experience.

26 **2.** Unanticipated conflicts have recently arisen in my schedule that necessitate additional time to
 27 prepare Plaintiffs' reply brief. Namely, on April 25, 2012, I was unexpectedly called upon by a preex-

1 isting client to develop and implement a strategy to promptly intervene in a federal “Reverse FOIA”
 2 case in which a complaint and motion for preliminary injunction were filed on April 23, 2012. Because
 3 the motion to intervene has not yet been filed, I am not at liberty to provide additional information re-
 4 garding this development. I was also unexpectedly called upon to develop and submit two substantial
 5 administrative filings seeking review and reversal of agency decisions issued under the federal Freedom
 6 of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*; (1) *Little Hocking Water District v. U.S.E.P.A.*, #
 7 HQ-FOI-01571-10 (filed April 25, 2012); (2) *Sierra Club v. Internal Revenue Service*, # F12074-0125
 8 (filed April 16, 2012). Additionally, I have also been required to review and analyze voluminous docu-
 9 ment production in a FOIA case in support of a case status report that is due May 1, 2012 in *National*
 10 *Wildlife Federation v. United States Federal Emergency Management Agency*, Case No. 2:11-cv-
 11 00512-JLR (W.D.Wash.). Finally, I have been engaged in preparing a petition for cost and attorney fees
 12 and coordinating supporting documentation that is due May 4, 2012 in *Audubon Society of Portland v.*
 13 *United States Natural Resources Conservation Service*, Case No. 3:10-cv-01205-H (D.Or.).

- 16 **3.** This is Plaintiffs’ first request for an enlargement of time in this case.
- 17 **4.** This request for enlargement is made in good faith and for no improper purpose.
- 18 **5.** On April 26, 2012, I conferred by email with Defendant’s counsel regarding this motion.

19 On April 27, 2012, Defendant notified me that it does not oppose this request.

20 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
 21 and correct.

23 Executed this 26th day of April, in Eugene, Oregon.

24 s/ David Bahr

25 David Bahr (Oregon Bar No. 901990)

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[PROPOSED] ORDER

This Court, having considered Plaintiffs' Unopposed Motion to Extend the Summary Judgment Reply Brief Deadline, and after considering the moving papers, arguments of counsel, and all other matters presented to the Court, HEREBY FINDS AND ORDERS THAT:

Plaintiffs' summary judgment reply brief shall be due no later than May 1, 2012.

IT IS SO ORDERED, this 27th day of April, 2012.

A handwritten signature in blue ink, appearing to read "JAMES C. SCOTT". The signature is fluid and cursive, with the name "JAMES" on the first line and "C. SCOTT" on the second line.

MARIA-ELENA JAMES
Chief United States Magistrate Judge

Presented by:

s/ David Bahr
David Bahr (Oregon Bar No. 901990)
Plaintiffs' counsel